

**BNYM / Puerto Rico - Employee Retirement System**  
**Doty, Robert - Vol. 1**  
8/11/2020

1 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO  
2 PROMESA TITLE III  
CASE NO: 17-BK-03283 (LTS)

3  
IN RE: THE FINANCIAL OVERSIGHT AND  
4 MANAGEMENT BOARD FOR PUERTO RICO  
as representative of  
5  
THE COMMONWEALTH OF PUERTO RICO, et al.,  
6 Debtor(s).

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7  
IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF PUERTO RICO  
PROMESA TITLE III  
9 CASE NO: 17-BK-03566 (LTS)  
10 IN RE: THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO  
11 as representative of  
12 THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF PUERTO  
13 RICO,  
Debtor(s).

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17 CONFIDENTIAL  
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19 REMOTE VIDEOTAPED EXPERT DEPOSITION UNDER  
20 ORAL EXAMINATION OF  
21 ROBERT DOTY  
22 DATE: August 11, 2020  
23  
24  
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

1           IN THE UNITED STATES DISTRICT COURT  
            FOR THE DISTRICT OF PUERTO RICO  
2           ADV. PROC. NO: 17-00356 (LTS)  
3           THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL  
            OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
4           ACTING BY AND THROUGH ITS MEMBERS,  
            -and-  
5           THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
            OF ALL TITLE III DEBTORS (OTHER THAN COFINA)  
6           -as co-trustees of  
            THE EMPLOYEES RETIREMENT SYSTEM OF THE  
7           GOVERNMENT OF PUERTO RICO,  
            Plaintiff(s),  
8  
            vs.  
9  
            DEFENDANT IM, et al.,  
10           Defendant(s).

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            IN THE UNITED STATES DISTRICT COURT  
14           FOR THE DISTRICT OF PUERTO RICO  
            ADV. PROC. NO: 17-00357 (LTS)  
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16           THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL  
            OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
17           ACTING BY AND THROUGH ITS MEMBERS,  
            -and-  
18           THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
            OF ALL TITLE III DEBTORS (OTHER THAN COFINA)  
19           -as co-trustees of  
            THE EMPLOYEES RETIREMENT SYSTEM OF THE  
20           GOVERNMENT OF PUERTO RICO,  
            Plaintiff(s),  
21  
            vs.  
22  
            STOEVEER GLASS & CO., et al.,  
23           Defendant(s).

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1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE DISTRICT OF PUERTO RICO  
3           ADV. PROC. NO: 19-00359 (LTS)  
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5           THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL  
6           OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
7           ACTING BY AND THROUGH ITS MEMBERS,  
8           -and-  
9           THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
10          OF ALL TITLE III DEBTORS (OTHER THAN COFINA)  
11          -as co-trustees of  
12          THE EMPLOYEES RETIREMENT SYSTEM OF THE  
13          GOVERNMENT OF PUERTO RICO,  
14          Plaintiff(s),  
15          vs.  
16          DEFENDANT 1H-78H, et al.,  
17          Defendant(s).

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18           IN THE UNITED STATES DISTRICT COURT  
19           FOR THE DISTRICT OF PUERTO RICO  
20           ADV. PROC. NO: 19-00361 (LTS)  
21  
22          THE SPECIAL CLAIMS COMMITTEE OF THE FINANCIAL  
23          OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,  
24          ACTING BY AND THROUGH ITS MEMBERS,  
25          -and-  
26          THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
27          OF ALL TITLE III DEBTORS (OTHER THAN COFINA)  
28          -as co-trustees of  
29          THE EMPLOYEES RETIREMENT SYSTEM OF THE  
30          GOVERNMENT OF PUERTO RICO,  
31          Plaintiff(s),  
32          vs.  
33          DEFENDANT 1G-50G, et al.,  
34          Defendant(s).

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1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE DISTRICT OF PUERTO RICO  
3           ADV. PROC. NO: 19-00366 (LTS)  
4           THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
5           FOR PUERTO RICO,  
6           -as representative of  
7           EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT  
8           OF THE COMMONWEALTH OF PUERTO RICO,  
9           -and  
10          THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
11          OF ALL TITLE III DEBTORS (OTHER THAN COFINA),  
12          -as Section 926 trustee of  
13          THE COMMONWEALTH OF PUERTO RICO,  
14          Plaintiff(s),  
15          vs.  
16          ANDALUSIAN GLOBAL DESIGNATED ACTIVITY  
17          COMPANY, et al.,  
18          Defendant(s).

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19           IN THE UNITED STATES DISTRICT COURT  
20           FOR THE DISTRICT OF PUERTO RICO  
21           ADV. PROC. NO: 19-00367 (LTS)  
22           THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
23           FOR PUERTO RICO,  
24           -as representative of  
25           EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT  
26           OF THE COMMONWEALTH OF PUERTO RICO,  
27           -and  
28           THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
29           OF ALL TITLE III DEBTORS (OTHER THAN COFINA),  
30           -as Section 926 trustee of  
31           THE COMMONWEALTH OF PUERTO RICO,  
32           Plaintiff(s),  
33           vs.  
34           GLENDON OPPORTUNITIES FUND, LP, et al.,  
35           Defendant(s).

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TRANSCRIPT of the virtual videotaped  
deposition of the expert witness, called for Oral  
Examination in the above-captioned matter, said  
deposition being taken by and before MICHAEL  
FRIEDMAN, a Notary and Certified Court Reporter of  
the State of New Jersey, via video teleconference,  
by WebEx, on August 11, 2020, commencing at  
approximately 9:35 in the morning.

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1 Q Did each maturity of the ERS bonds  
2 have its own CUSIP number?

3 A That is my understanding.

4 Q It says here the registered owner  
5 is Cede, C-E-D-E, and Company?

6 A Yes, sir.

7 Q Could you tell us what Cede and  
8 Company is?

9 A Cede and Company is the designee of  
10 Depository Trust Company to be shown as the  
11 owner of the bonds for purposes of  
12 facilitating electronic trading.

13 Q And for the record, could you tell  
14 us what the Depository Trust Company is?

15 A The Depository Trust Company is a  
16 company created to facilitate electronic  
17 trading, and to eliminate paperwork so that  
18 we no longer have paper bonds. We have  
19 electronic bonds.

20 Q Have you heard of something called  
21 a "global" or "jumbo" bond certificate?

22 A I have heard the term. I mean, my  
23 understanding is there would be a jumbo  
24 certificate for Depository Trust Company  
25 here.

1           It's been a while since I dealt  
2   with that, but it -- and I'm a little bit  
3   uncertain about how it relates specifically  
4   to each individual maturity.

5       Q   Okay. Now, if we look at  
6   Exhibit 6, it says registered owner is Cede  
7   and Company.

8           Does that indicate that Cede and  
9   Company owns this maturity for all purposes?

10       MR. BASSETT: Objection. Calls for  
11   a legal -- sorry. That's my fault. I  
12   wanted to clarify that my objection was  
13   on the basis that the question called  
14   for a legal conclusion.

15       Q   Okay. And you can answer it,  
16   Mr. Doty.

17       A   I don't think the fact that Cede  
18   and Company's name is on this bond as -- by  
19   itself, that broad indication.

20       Q   Why not?

21       A   What it shows is that Cede and  
22   Company is the registered owner. That  
23   doesn't mean that it is -- if we could go  
24   back -- I'm recalling -- I'm going to have to  
25   ask to have the question reread.

1 I think I need to have the question

2 more firmly in my mind.

3 Q Okay. Let me go back.

4 What does it mean to say that

5 someone is a "registered owner" of the bond?

6 A It means that they are the

7 registered owner of the bond with the

8 trustee.

9 So that's what that means.

10 Q Does that mean they're the only

11 person with legal rights to the bond?

12 MR. BASSETT: Objection.

13 A Not by itself, it doesn't.

14 Q What else would one need to know in

15 order to learn who has other legal rights to

16 the bond?

17 A You would need to read the bond

18 resolution and see what rights the bond

19 resolution gives.

20 Q Now, these bond issues, as I think

21 you've testified, were sold to the public

22 through an underwriting syndicate.

23 Correct?

24 A Correct.

25 Q Do you know whether this particular

1 I have always used the term "beneficial  
2 owner."

3 Q Is there a difference between the  
4 legal owner and the beneficial owner?

5 MR. BASSETT: Objection.

6 A I believe that's a legal opinion.  
7 If you want me to answer it, I will answer  
8 it.

9 Q Please do.

10 A My understanding is that the legal  
11 owner is different from the beneficial owner.

12 Q Okay. So who is the legal owner?

13 A Cede and Company.

14 Q Who is the beneficial owner?

15 A I don't know.

16 Q Would it be the investors who  
17 purchased the bond through the underwriting  
18 syndicate at the time the bonds were sold to  
19 the public?

20 A It would be the individuals who  
21 have rights to the bonds through their broker  
22 dealers and their broker dealers'  
23 relationships to DTC from time to time.

24 Q And those would be individuals who  
25 purchased the bonds?

1 A They are the individuals who  
2 purchased the bonds.

3 Q Or maybe we call them "investors."  
4 Is that a better word?

5 A That's fine. That's a shorter way  
6 of saying it.

7 Q So Cede and Company has legal title  
8 to the bonds and the investors have equitable  
9 title to the bonds?

10 MR. BASSETT: Objection, legal  
11 conclusion.

12 A I do believe that's a legal  
13 conclusion. I guess I think that's right. I  
14 guess saying it's equitable would be a way of  
15 doing it.

16 I haven't actually seen it said  
17 that way, but the phrase "beneficial owner"  
18 and so on implies that.

19 I think that's probably correct.

20 Q Okay.

21 MR. STEWART: We've been on the  
22 record. This is a good break point for  
23 me. If you would like to take a break,  
24 Mr. Doty, we can take one now. If you  
25 would like to keep going, we can keep



1 all simultaneous. The bonds had been sold,  
2 the public is obligated to buy the bonds.

3 And the -- they are paying for the  
4 bonds that -- at the time of the closing, and  
5 the underwriters are getting that money from  
6 them, and the bonds are going directly to DTC  
7 and -- into the various accounts at DTC.

8 It's all simultaneous.

9 Q So is it your testimony that at no  
10 point the underwriters own the bonds?

11 MR. BASSETT: Objection.

12 A I think that you're -- I mean,  
13 we're getting pretty far afield from my  
14 opinions. There -- you know, I can't speak  
15 for the universe of every single transaction.

16 But as a general rule, the  
17 underwriters would not go into the  
18 transaction without having commitments on the  
19 other side from the investors. And when the  
20 bonds are issued, you see the -- we saw  
21 specific maturities and so on going to DTC.

22 And when they go to DTC, they're  
23 going to the accounts for the participants at  
24 DTC. It's going to be a legal -- a legal  
25 conclusion as to whether, for some nanosecond

1 or something, underwriters might or might not  
2 own the bonds.

3 I think that's a legal conclusion.

4 But as a practical matter, the underwriters  
5 are not going to enter into the transaction  
6 without having the commitments from investors  
7 on the other side.

8 Q Do you know one way or the other,  
9 in this particular bond transaction, whether  
10 the underwriters did or did not have  
11 commitments from investors to purchase all of  
12 the bonds?

13 A No.

14 Q Now, is it not the case that the  
15 underwriters themselves are participants in  
16 DTC?

17 MR. BASSETT: Objection, outside of  
18 the scope of his report.

19 A I don't actually know. But I can  
20 surmise.

21 Q What is your surmise?

22 A Well, UBS is a major firm. I would  
23 surmise that they're a participant in DTC.

24 Q And the other underwriters, do you  
25 have any reason to believe they're not direct

1 or indirect DTC participants?

2 A Well, I don't know about all of  
3 them. They may or may not be direct or  
4 indirect participants in DTC. They might  
5 have relationships with other underwriters  
6 who are participants.

7 That gets to be fairly complicated.

8 Q At the time the underwriters buy  
9 the bonds, is it not the case that the folks  
10 at DTC show, in the first instance, the  
11 underwriters as the registered owners of the  
12 bonds?

13 MR. BASSETT: Objection, lack of  
14 foundation, outside of the scope of his  
15 report. I don't see how any of this is  
16 relevant to the opinions that Mr. Doty  
17 is offering in this case, which is the  
18 meaning of certain terms in municipal  
19 finance.

20 Q You can answer the question.

21 MR. STEWART: Nick, the speaking  
22 objections are unnecessary.

23 Q You can answer the question,  
24 Mr. Doty.

25 A I don't know.

1 Q You don't know one way or the  
2 other?

3 A No.

4 Q Now, under the bond purchase  
5 agreement that we're looking at, Exhibit 7,  
6 Paragraph 1, it says, "The underwriters agree  
7 to purchase from the system and the system  
8 agrees to sell to the underwriters the  
9 bonds."

10 Do you remember that language that  
11 we looked at?

12 A Yes.

13 Q Did the underwriters ever own the  
14 bonds?

15 MR. BASSETT: Objection. Asking  
16 for a legal conclusion.

17 A I believe that's a legal  
18 conclusion. And I don't know the answer to  
19 that as to whether, for a nanosecond, they  
20 may have owned some bonds.

21 Q You don't know whether they would  
22 have owned the bonds for more than a  
23 nanosecond either.

24 Correct?

25 MR. BASSETT: Same objection.

1 A Correct.

2 Q And there it says, "Upon receipt of  
3 payment, Bank of New York will contact the  
4 Depository Trust Company and close the issue  
5 and release the series of bonds."

6 A Right. That's when -- that is when  
7 the fiscal agent acting for ERS delivers the  
8 bonds to DTC, which at that point has a list  
9 of names of participants in whose accounts  
10 those bonds will be deposited.

11 Q And the participants can include  
12 the underwriters.

13 Correct?

14 MR. BASSETT: Objection.

15 A They could. But the underwriters  
16 are not investing in the bonds, so it's -- I  
17 mean, they -- they can be a participant, but  
18 they may have -- and they probably have  
19 customers on their records.

20 So yes, they would -- I'm thinking  
21 this through out loud, but as a -- the answer  
22 is yes, they would -- if they're a  
23 participant, which I suspect they were, then  
24 there would be bonds that would be delivered  
25 to them for their customers.

1 Got it.

2 Q Is everybody there?

3 MR. BASSETT: Yes, thank you.

4 Q Okay. Do you see the heading,

5 "What are Municipal Securities?"

6 A Yes.

7 Q Okay. And there, you write

8 "Municipal" -- and I'm going to just direct

9 your attention to the second sentence where

10 you say, "Municipal securities are debt

11 securities, effectively loans, payable from

12 taxes of governmental or other project

13 revenues."

14 Why do you call them "municipal

15 securities loans"?

16 A Well, they are loans from the

17 investing public.

18 Q Who is the borrower?

19 A The borrower is the governmental

20 issuer.

21 Q Okay. Now, what's the evidence of

22 the loan?

23 MR. BASSETT: Objection.

24 A There is no paper evidence of it,

25 except in the DTC, the paper bonds. There's

1 a -- I guess there's a paper bond at DTC.

2 Maybe that's what you're referring  
3 to as the "jumbo bond," but that would be it.

4 Q Okay. But there's a means of  
5 determining who's the owner beneficially of  
6 the bond?

7 A On DTC's books, yes.

8 Q And every bond has a beneficial  
9 owner.

10 Correct?

11 A I suppose so.

12 Q So -- and the evidence of the  
13 beneficial ownership is the chain of book  
14 entries running through DTC down to the  
15 retail account of the individual investor.

16 Correct?

17 A Correct.

18 Q Do you know how an issuer knows who  
19 to send payments of interest to?

20 A It's specified in the bond  
21 resolution in this case.

22 Q Okay. And do you know how they --  
23 how they -- the identity of the individual  
24 investor is determined?

25 A That flows through the DTC, from

1 the trustee to DTC, to the individual  
2 investors.

3 Q Okay. And so --

4 A To the direct and indirect  
5 participants, and from there, down to the  
6 individual investors.

7 Q So going back to this, is it fair  
8 to say that the lender is the person who has  
9 the beneficial rights to the bond?

10 MR. BASSETT: Objection.

11 A Yes. Once you get to the investor  
12 level, yes.

13 Q Okay. And that would be whoever it  
14 is who happens to own those beneficial  
15 rights.

16 Correct?

17 MR. BASSETT: Objection, misstates  
18 testimony.

19 A Right. But once the bonds are  
20 placed through DTC and the bond issue is  
21 completed, it's the individual investor.

22 Q Okay.

23 A By "individual," I don't mean  
24 people. I mean specific -- the specific  
25 parties.